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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

IN RE ZORAN CORPORATION
DERIVATIVE LITIGATION,

Case No. CV 06-05503 WHA

MOTION FOR APPROVAL OF REVISIONS
TO PROPOSED FINAL ORDER IN LIGHT
OF COURT'S ORDER OF SEPTEMBER 2,
2008
[Local rule 7-11(a)]

This Document Relates To:

ALL ACTIONS

Date: N/A
Time: N/A
Dept: Courtroom 9, 19th Floor
Judge: The Honorable William Alsup

1 Nominal Defendant Zoran Corporation (“Zoran”) respectfully moves this Court, pursuant
 2 to Local Rule 7-11(a), for approval of a revised proposed Final Order embodying the derivative
 3 settlement recently approved by the Court, subject to a stated condition. The prior version of the
 4 proposed Final Order was submitted with plaintiff’s motion for final approval of settlement and
 5 was attached as Exhibit B to the Stipulation of Settlement (which in turn was attached as Exhibit
 6 A to the Declaration of Juli Farris, dated July 18, 2008). (See Docket No. 205.) The revised
 7 Final Order, a copy of which is attached hereto as Exhibit A, has been modified to take into
 8 account the condition set forth in the Court’s September 2, 2008 Order which, among other
 9 things, required exclusion of DLA Piper (“DLA”) and PricewaterhouseCoopers (“PwC”) from the
 10 scope of the release otherwise contained in the parties’ Stipulation of Settlement.

11 Specifically, paragraph 3 of the revised Final Order modifies the definition of “Related
 12 Persons” set forth in Section 1.13 of the Stipulation of Settlement to make clear that DLA and
 13 PwC (or any other outside third-party advisors to Zoran during the relevant period) do not fall
 14 within the definition of “Released Persons” contained in Section 1.15. The effect of this portion
 15 of the Court’s order is to delete references to Zoran’s outside agents, underwriters, investment
 16 bankers, advisors, accountants, auditors and attorneys previously contained in Section 1.13 and
 17 incorporated into Section 1.15 by reference. To ensure that the final release and other terms of
 18 the settlement are clear and easy to ascertain, Zoran respectfully moves the Court to approve the
 19 form of Final Order, which would be followed by entry of judgment. *See In re Critical Path, Inc.*
 20 *Deriv. Litig.*, No. C-01-0684 (WHA), 2003 U.S. Dist. LEXIS 22378 (N.D. Cal. Dec. 9, 2003)
 21 (approving similar type of final order following approval of modified settlement).

22 In all other respects, the release is identical to the form approved by the Court at the time
 23 of preliminary approval of the settlement and as set forth in the form of notice distributed to all
 24 shareholders—none of whom objected to any aspect of the settlement. The release has been
 25 consistent insofar as it applies to all current and former officers, directors and employees of
 26 Zoran, including but not limited to those named as defendants in this case. This form of release is
 27 fully consistent with applicable case law. *See Class Plaintiffs v. City of Seattle*, 955 F.2d 1268,
 28 1287-89 (9th Cir. 1992) (releasing claims against State of Washington in bondholders’ action

arising from same predicate facts alleged in that bondholders' action); *accord Reyn's Pasta Bella, LLC v. Visa USA, Inc.*, 442 F.3d 741, 748 (9th Cir. 2006) ("A class settlement may also release factually related claims against parties not named as defendants"); *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 108 (2d Cir. 2005); *see also* 4 Alba Conte & Herbert Newberg, *Newberg on Class Actions* § 12:16 (4th ed. 2002) ("A settlement may also seek to discharge parties who have not been served with process and are therefore not before the court"). The release would also be consistent with the Court's direction to the parties, upon preliminary approval of the settlement, to limit the scope of Released Claims to those claims "that have been asserted or could have been asserted . . . based on or arising from the facts, transactions, events, occurrences, acts, disclosures, statements, omissions or failures to act alleged in the Derivative Litigation or closely related thereto." (Stipulation of Settlement, as revised, ¶ 1.14.)

That form of release was important in inducing Zoran's insurers to contribute \$3 million in cash to the settlement on behalf of all of its insureds, that is, all Zoran directors and officers who could have been named as defendants in the litigation and share coverage under the D&O policy. As such, the scope of the release is typical in settlements of this sort. It was also important to Zoran, who is obligated to advance defense costs to its officers and directors and to indemnify them in certain circumstances. Zoran will be the recipient of the majority of the insurance proceeds, and it agreed to the settlement as a means of achieving a complete resolution of matters related to putative backdating involving the Company. Because the release of Zoran's directors, officers and employees is supported by consideration (insurance proceeds), they are situated differently than DLA or PwC which, as the Court noted, did not contribute to the settlement. Thus, the modified release would be consistent with the definition of released persons as including the past and present directors, officers, and employees of nominal defendant Zoran. (Stipulation of Settlement, as revised, ¶ 1.13.)

The circumstances between non-defendant current and former officers, directors and employees of Zoran also differs from outside advisors in at least two other respects:

First, a state court derivative action was filed after this case and makes virtually identical allegations, although it names some additional former and current officers and directors of the

1 Company as defendants. That case has been stayed in light of proceedings here. From Zoran's
2 perspective, and certainly its insurer's perspective, it makes no sense to settle the action in this
3 Court only to incur the expense and burdens of relitigating these same claims regarding option
4 grants in the same period in state court based on the addition of some peripheral, at best,
5 defendants who are encompassed within the release, as written.

6 *Second*, plaintiff obtained extensive discovery from Zoran dating back to 1996, and was
7 therefore in an informed position to decide who at Zoran was potentially implicated in the options
8 process throughout the relevant period. Claims "based on or arising from the facts, transactions,
9 events, occurrences, acts, disclosures, statements, omissions or failures to act alleged in the
10 Derivative Litigation or closely related thereto" involving nominal defendant Zoran and its past
11 and present directors, officers, and employees were thoroughly investigated and litigated in this
12 case.

13 Accordingly, Zoran's concern is that certain language in the September 2, 2008 Order
14 could be read to mean that only the named defendants (and their agents) could be released.
15 Excluding non-defendant officers, directors or employees of Zoran from the release in the
16 Stipulation of Settlement—in contrast to the scope of release described in the Court-approved
17 shareholder notice—would potentially expose Zoran to additional, cumulative litigation in the
18 parallel state derivative case. *See Wal-Mart*, 396 F.3d at 108 (noting that company released non-
19 parties because to do otherwise "would have invited relitigation of the same factual allegations").
20 This would result in significant additional expenditures by Zoran and its insurer on claims that are
21 properly within the scope of the release preliminarily approved by the Court and to which no
22 shareholder objected. Because the scope of this aspect of the release was an important feature of
23 the settlement to all the parties and the insurer, Zoran felt it should note this for the Court when
24 considering the Final Order and entry of judgment.

1 Zoran has been informed that the Individual Defendants support this Motion and agree
2 with the Court's entry of the revised Final Order, and that Lead Plaintiff does not oppose entry of
3 the Final Order as revised.

4 Dated: September 10, 2008

AKIN GUMP STRAUSS HAUER & FELD

6 By: _____/s/
7 Steven S. Kaufhold

8 Attorneys for Nominal Defendant Zoran Corp.

9 **FILER'S ATTESTATION**

10 Pursuant to General Order No. 45, Section X(B) regarding signatures, I attest
11 under penalty of perjury that concurrence in the filing of this document has been obtained from
12 Susan S. Muck, John C. Dwyer, John H. Hemann, and Sara B. Brody.

13 Dated: September 10, 2008

14 AKIN GUMP STRAUSS HAUER & FELD LLP

15 By: _____/s/
16 Steven S. Kaufhold
17 (SBN 157195)

Attorneys for Nominal Defendant
ZORAN CORP.